

ALL INDIA BANK RETIREES' FEDERATION (REGD.)

NOTE ON SUPREME COURT JUDGEMENT ON 100 PER CENT DA FOR
DISCUSSION IN CORE COMMITTEE MEETING TO BE HELD ON
2ND & 3RD JUNE 2018 AT DELHI

1 HISTORICAL PROSPECTIVE/ DEVELOPMENTS IN LEGAL BATTLE ON 100 100 PERCENT DA TO PRE NOVEMBER 2002 RETIREES

- (a) Wage settlement was signed in banking industry on 2nd June, 2005 providing 100 per cent DA to all employees and retirees. However those retired prior to November 2002 were denied the benefit of 100 per cent DA.
- (b) Aggrieved retirees filed WPs in Madras High Court in 2006 against this discrimination.
- (c) Similarly, United Bank of India Retired Employees Welfare Association and some individuals from Kolkata also filed WP praying for 100 per cent DA to pre- November 2002 as per the provisions of 1993 settlement on pension.
- (d) Single Judge Bench of Madras High Court decided in favour of retirees on this issue. However double bench of this court reversed the judgment of single bench and admitted SLP of bank managements thereby deciding the case against the retirees.
- (e) In 2013, Retirees from Chennai preferred the appeal against the judgment of Madras High Court . However, in February, 2017 SLPs filed by retirees were dismissed by the Supreme Court at the admission stage itself. Subsequently, retirees filed Review Petitions which were also rejected by the Court. In this way, legal battle was virtually lost by the retirees in the matter of 100 per cent DA .

- (f) However, luckily, judgment of Kolkata High Court in the single bench as well as double bench was in favour of retirees giving new hopes to retiree community on legal front.**
- (g) However, United Bank Management preferred appeal against Kolkata High Court in Supreme Court in December, 2016.**
- (h) Along with legal battle being fought by our comrades in different courts, AIBRF was making organisational efforts to achieve this demand right from 2005 as per its policy and object .**
- (i) There was industry level settlement in 2010 after 2005 which granted 100 per cent DA to post November 2002 retirees. This issue could not be resolved despite all organisational efforts as the priority for the organisation was to achieve one more pension option to the left over retirees which were about 60000 in number. Therefore this demand has to be kept pending.**
- (j) Again , AIBRF started renewed efforts to achieve this demand during 10th wage settlement right from 2012. Though it was looking achievable on the basis of positive developments taking place during negotiation process of 2 years. But at the last minute developments , it was not approved by IBA.**
- (k) Subsequently, Record Note dated 25.05.2015 where we had some hope for achieving this demand was also closed by IBA in the name of absence of mandate from the bank management to do so.**
- (l) In March, 2107 AIBRF was approached by UBIREWA to extent support – financial and logistic to handle the case in Supreme Court in view of their limited resources and lack of network in Delhi. Though AIBRF consistent policy has been to make all organisational efforts to achieve the demand, we simultaneously extended required support to the retirees fighting in courts as it was affecting large number of our membership. In view of this we agreed for to give them support and took initiatives to engage advocates for them, incurring legal expenses and handling legal work for them.**

- (m) As all our organisational efforts were not bringing desired results immediately, AIBRF in its Indore meeting decided to file Intervention Application in Supreme Court looking to interest of more than 1 lakh retirees. Accordingly IA was filed by AIBRF in April 2017.
- (n) It may be clarified that the case and arguments were basically based on written reply filed by UBIREWA which was drafted, vetted and approved by the UBIREWA and its advocates.
- (o) UBI SLP was argued in Supreme Court on 01.08.2017 by two senior councils engaged by AIBRF on behalf of UBIREWA and AIBRF. To prepare for hearing on 1.08.2018, we had long discussion with the Senior Council on 29.07.2017 where The General Secretary of UBIREWA, Shri Debesh Bhattacharya was also present and participated in discussion. He was kept fully informed about the development and the case was handled based on the Written Reply submitted by them.
- (p) To handle this case , AIBRF constituted committee of Delhi based office bearers namely Shri D.P.Gupta, VP, Shri A.K Bansal, DGS and Shri Suresh Sharma , organising Secretary along with GS Shri S.C.Jain. In addition to this many activists from Delhi extended all support to handle the case in Supreme Court. Their sincere and continuous efforts in arranging several rounds of meetings with advocates, preparing documents for filing in courts coordinating with different persons / agencies were really valuable and appreciable and were made with honest and sincere intention to achieve the organisational goals.
- (q) AIBRF efforts created new hopes when Supreme Court passed order on 02.08.2017 recalling dismissed SLPs of retirees against the judgment of Madras High Court.
- (r) On completion of hearing on 23 August, 2017 the judgment was reserved .
- (s) The Judgment was delivered on 16.05.2018 after lapse of more than 8 months.

(t) To our great dismay, disappointment and shock, against our logical and strong hopes the judgment has been unfavorable for retirees.

2. ANALYSIS OF THE JUDGMENT

- (a) The judgment is delivered on 16.05.2018 by the bench of Justice Arun Mishra and Justice U.U. Lalit though heard by the bench of Justice Adarsh Goyal and Justice U.U.Lalit as new bench was constituted to deal with labour cases in the intervening period.**
- (b) It is observed that the judgment lacks logical sequence in dealing the matter, has several contradictions, many vital facts brought through documents were either ignored or misinterpreted etc. They are specifically dealt in following Paras.**
- (c) Page No. 01- It is stated Civil Appeal No. 5255-5255 of 2018 (arising out of SLP –Civil Nos. 7368-71 of 2017). Judgment was reserved on 01.08.2017 and 23.08.2017 after the closer of arguments on SLPs arising out of Kolkata High Court judgment and recalled SLPs arising out of madras High Court Judgment. Therefore it is not clear how reference of above 2018 SLPs has been made in the Judgment dated 16.05.2018. No details of Civil appeal No 5255- 5255 of 2018 are given and how it is connected with this judgment are dealt with.**
- (d) Recalled SLPs arising out of Madras High Court Judgments were heard on 23.08.2017 and the judgment was reserved on them. However, Judgment dated 16.05.2018 is silent on it and there is no mention of these SLPs in the judgement . On page no 40(Para 26) of the judgment it is stated that decision of Madras High Court has already been confirmed by the Supreme Court. This statement is very vital inaccuracy and completely contrary to the actual happenings/ facts. Therefore, the judgment is based on inaccurate facts.**
- (e) Page No. 03- The Court has completely ignored clause no 06 of 1993 which deals with DA as per RBI formula without giving any reasons and upheld appendix II of pension Regulations 1995 which is subject to**

provisions of clause no 6. In 1995 banks were paying DA on tapering basis to employees as well as all categories of pensioners. In 2005 DA formula was modified in banks as well as RBI. Therefor clause 6 becomes operative and appendix II need to be suitably modified. These vital analysis is completely missing in the judgment.

- (f) It was specifically brought out through oral arguments and documentary evidence that there is no specific provision in the settlement dated 02.06.2005 debarring pre-2002 retirees from this benefit. IBA circular dated 28.06.2005 only put a provision to exclude pre-2002 retirees from the benefit. This was merely administrative circular which can not override provisions of the settlement. These facts were neither discussed and mentioned in the Judgment dated 16.05.2018.
- (g) Page No. 09- (Para 7)- It is stated that subsequent settlement dated 27.04.2010 signed after gap of 5 years ratified the instruction to debar pre- 2002 retirees given in IBA circular dated 28.06.2005 . But there is no mention how such modification with retrospective effect is legally correct.
- (h) Page No 12-15- It deals with RBI circulars giving 100 DA benefits to pre-November 2002 retirees with effect from 01.02.2005. No reason was given as to how these developments were not made applicable to bank retirees despite clause of 1993 settlement.
- (i) In general all irrational facts and logics of Madras High Court were accepted in Toto in ignorance of logical facts appreciated in Kolkata Judgment-both at single as well as double bench level.
- (j) Notes on analysis of the Judgment by Andhra Pradesh State Committee and Comrade N. Sankarsubramaniam after comprehensive study of it are enclosed which could be of help for meaningful discussion.

3. FURTHER LEGAL OPTIONS AVAILABLE TO RETIREES

- (a) Having lost the case in Supreme Court, the Retirees have two more legal options available to pursue the case in the court. As per provisions of

Article 137 of the Constitution, Review petition can be filed for review of the judgment.

- (b) Review Petition need to filed within 30 days. 30 days period for our case will expire on 14th June 2018. However, during this period Supreme Court will remain closed for summer vacation, therefore, Review petition can be filed up to 02.07.2018 the date when the courts reopen.**
- (c) Review Petitions are not heard in open court. They are disposed in Chamber of judges.**
- (d) After the review petition is dismissed, Curative Petition can be filed. Curative Petition can be filed with the certification of a senior advocate. It is handled by 3 senior most judges and 2 judges of the bench who passed the judgment if available. The Court can impose exemplary cost to the petitioners if his plea lacks merit.**
- (e) Detailed Note prepared on procedure for Review & Curative Petitions are enclosed for ready reference of the committee.**

4. GROUND REALITIES FOR FILING REVIEW PETITION

- (a) Review Petitions are attended by the same bench who passed the judgment.**
- (b) Rejection Ratio of Review petition is close to 99 per cent . So chances of success are very low.**
- (c) In this case, AIBRF legal position is as intervener as we filed only IA. Normally Review Petitions are filed by main parties to SLP. However as AIBRF is affected party, chance can be taken to file Review Petition.**
- (d) We find that UBIREWA has already taken decision to file Review Petition independently without any consultation and coordination with AIBRF. It looks that they do not feel it necessary at this stage to coordinate with AIBRF for Review despite the fact that AIBRF has invested heavily in handling the case in Supreme Court in terms of money as well as strong logistic support.**
- (e) Four Review petitions filed by our comrades from Chennai have already been rejected by the Supreme Court.**

- (f) On one side aspiration and expectation of large number of retirees are attached with this in particular after AIBRF filing IA and not to pursue the case legally whatever worth it is may spread further frustrations and on another side, involving the organisation too much in litigation may have bearing on our organisational image and capacity to handle them in different forum effectively.**
- (g) It will cost considerable money and efforts for which organisation should be ready .**
- (h) In case of further losing the legal battle may give opportunity to some individual to spread emotional outburst against the organisation. This tendency is already seen. Some of our activists are already active in spreading the general emotional outburst and messages circulated by them are enclosed for the information and knowledge of the committee.**

Submitted for consideration

**(S.C.JAIN)
GENERAL SECRETARY**